

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

NATIONAL MGA INSURANCE,	)	
ALLIANCE, INC.	)	
Plaintiff	)	
	)	
vs.	)	No. 5:19-cv-512
	)	
ILLINOIS MUTUAL LIFE	)	
INSURANCE COMPANY	)	
Defendant	)	

**NOTICE OF REMOVAL**

Defendant Illinois Mutual Life Insurance Company (“Illinois Mutual” or “Defendant”) respectfully removes this action to the United States District Court for the Western District of Texas, San Antonio Division.

**INTRODUCTION**

1. Plaintiff has filed a lawsuit against Illinois Mutual in the County Court at Law No. 3 of Bexar County, Texas. On May 9, 2019, Plaintiff amended its petition to add a cause of action for breach of contract and a claim that it is entitled to “tens of thousands of dollars” in attorney’s fees. In so doing, Plaintiff confirmed that the amount in controversy exceeds \$75,000; and because the parties are diverse, this Court has diversity jurisdiction.

**GROUND FOR REMOVAL**

2. This case is removable under 28 U.S.C. § 1441 based on federal diversity jurisdiction existing under 28 U.S.C. § 1332:

a. Plaintiff is and was at the time of the filing of the Plaintiff's Amended Petition, a citizen of Texas. *See* Petition at ¶ III (Exhibit 1).<sup>1</sup> Illinois Mutual is an Illinois citizen with its principal place of business in Illinois. *See* Original Petition at ¶ 1 (Exhibit 1). Although Plaintiff named Mark Oeschner, allegedly a Texas resident, as a defendant in the Original Petition, no citation was ever issued for Mr. Oeschner; he was not served with process; and he has not made an appearance in this suit. *See generally* Exhibit 1. Accordingly, Mr. Oeschner should be disregarded for purposes of determining whether the parties are diverse. *See, e.g., Reynolds v. Pers. Rep. of the Estate of Johnson*, 139 F.Supp. 3d 838 (W.D.Tex. 2015); *Doe v. GEO Grp., Inc.*, No. SA-16-CV-173-XR, 2016 U.S. Dist. LEXIS 67805 at \*8 (W.D.Tex. May 24, 2016).

b. Plaintiff alleges claims for tortious interference with contract, misappropriation of business opportunities, and breach of contract. *See* Amended Petition at ¶¶ 4-6 (Exhibit 1). Although Plaintiff alleges that its damages are not in excess of \$50,000.00, it also contends it makes "an attorneys' fees claim of tens of thousands of dollars." Amended Petition at ¶ 3. It is therefore apparent from an analysis of Plaintiff's allegations that the amount in controversy in this action exceeds the jurisdictional sum of \$75,000.00. *See St. Paul Reinsurance Co, Ltd. v. Greenberg*, 134 F.3d 1250, 1255 (5th Cir. 1998); *Allen v. R & H Oil & Gas Co.*, 63 F.3d 1326, 1335 (5th Cir. 1995).

c. Complete diversity of citizenship exists between Plaintiff and Illinois Mutual; and the amount in controversy exceeds \$75,000. This case, therefore, is removable based on diversity jurisdiction.

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<sup>1</sup> Pursuant to 28 U.S.C. § 1446(a), Illinois Mutual has attached copies of all process, pleadings, or orders in the Bexar County Clerk's file as Exhibit 1 to this Notice of Removal.

4. Venue is proper in this district under 28 U.S.C. § 1441(a) because this district and division embrace the place where the removed action has been pending. *See* 28 U.S.C. § 124(d)(4).

5. Plaintiff's First Amended Petition was filed on May 10, 2019. Illinois Mutual files this removal notice within the 30-day period required in 28 U.S.C § 1446(b)(3) and (c)(1).

6. Pursuant to 28 U.S.C. § 1446(d), Illinois Mutual will promptly provide written notice of this removal to the County Clerk for Bexar County, Texas.

Respectfully submitted,

By: /s/ Andrew F. MacRae  
ANDREW F. MACRAE  
*State Bar No. 00784510*  
LEVATINO|PACE PLLC  
O.P1101 S. Capital of Texas Highway  
Building K, Suite 125  
Austin, Texas 78746  
Tel: (512) 637-1581  
Fax: (512) 637-1583

Attorneys for Defendant Illinois Mutual  
Life Insurance Company

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Notice of Removal has been filed through the CM/ECF system on this 14th day of May, 2019. A copy of this Notice of Removal has also been forwarded via e-mail, to the following counsel of record:

Larry Moreno  
Larry Moreno, P.C.  
P.O. Box 839  
Helotes, Texas 78023

/s/ Andrew F. MacRae  
ANDREW F. MACRAE